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ABSTRACT

These guidelines were developed by a committee of staff members from special education divisions at the Texas Education Agency and comprise a collection of federal and state criteria and regulations concerning placement of students with disabilities in the least restrictive environment. Specific requirements (with legal citations) and criteria (based on a compilation of hearing officer decisions, Office of Civil Rights findings, court cases, and federal government policy decisions) are given for each of six issues recommended for consideration in the decision making process. These address: (1) the primacy of the individual student's education needs; (2) provision of special education services in as integrated a manner as possible; (3) identification of those services which need to be provided in a more restrictive setting; (4) provision for integration with nonhandicapped students in nonacademic and extracurricular activities; (5) consideration of possible harmful effects of a projected placement; and (6) placement, if possible, in the school which the student would attend if not disabled. These guidelines are cross referenced to another document ("All Children Can Learn Together: Suggestions for Least Restrictive Environment") offering teaching suggestions. (DB)

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All Children Can Learn Together

Guidelines for Least Restrictive Environment

December 1991
Special Education Programs
Texas Education Agency

EC 301303

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Foreword

A committee of staff members from special education divisions at the Texas Education Agency has identified the federal and state regulations which define the concept of least restrictive environment (LRE). These are the regulations which should guide school districts as they work toward educating students with and without handicaps together whenever possible. This publication contains not only the regulations behind LRE, but the criteria which Texas Education Agency compliance monitors use to verify that placement decisions for students with handicaps have been made on an individual basis and have been justified and documented properly.

The committee has taken the concept of LRE a step further than this collection of criteria and regulations. It developed another publication, *All Children Can Learn Together: Suggestions For LRE*, which provides useful information for districts wanting to go beyond the letter of the law and, in the spirit of the law, provide the best possible educational environment for all their students. References to the *Suggestions* document appear in the margins throughout this publication.

Guidelines for Least Restrictive Environment

The federal government has increased its efforts to see that students with handicaps are educated as much as possible with their peers without handicaps. This focus on maintaining students in the least restrictive environment (LRE) applies not only to the educational setting, but to nonacademic and extracurricular opportunities as well. The Texas Education Agency, in turn, has intensified its monitoring of this fundamental aspect of Public Law 101-476 (formerly 94-142).

There are six questions which are important for the admission, review, and dismissal (ARD) committee to consider to help ensure that all students are educated in the least restrictive environment. These are the same six questions outlined in an administrative letter of clarification to school districts by the Agency dated July 20, 1987. These questions are:

1. Is the placement based on the educational needs of the individual student?

2. Are special education services provided in such a way as to promote the education of students with handicaps with those who are nonhandicapped to the maximum extent appropriate?

3. What services that cannot be provided in a regular classroom, on a regular campus, or in a less restrictive setting need to be provided to the student with handicaps in a more restrictive setting because of the nature and severity of the handicapping condition?

4. Are provisions made for the student with handicaps to participate in nonacademic and extracurricular activities with nonhandicapped students?

5. In making the placement decision, has consideration been given to any potential harmful effect on the student or on the quality of services which he/she needs?

6. Will the student's placement be in the school which he/she would attend if not handicapped?

This document analyzes each question according to the following format:

- **Requirements**
  The legal citations according to federal and state rules and regulations.

- **Criteria**
  Factors to consider in determining least restrictive environment. These criteria represent a compilation of hearing officer decisions, Office of Civil Rights findings, Texas Education Agency complaints division decisions, court cases, and U.S. Office of Special Education Programs policy decisions.

The criteria are included to help district personnel document the rationale for placement decisions for monitoring and compliance purposes.

A companion publication, *All Children Can Learn Together: Suggestions for Least Restrictive Environment*, is available from the Texas Education Agency Publications Distribution office. It offers ways of improving educational programs in relation to each of these six questions. References to the *Suggestions* document appear in the margins throughout this publication.

1. ***Is the placement based on the educational needs of the individual student?*** See Question 1 *Suggestions*

Requirements

34 CFR §300.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement:

(2) Is based on his or her individualized education program.

TEC §21.501 Statewide Plan.

(7) ensure that an individualized education plan for each handicapped student is properly developed, implemented, and maintained in the least restrictive environment which is appropriate to meet the student's educational needs.

19 TAC §89.235 General Program Requirements.

(a) Each local school district has the responsibility for providing educational and related services to students in the least restrictive environment.

19 TAC §89.242 Instructional Arrangements and Settings.

(a) Each local school district or cooperative shall be able to provide services with special education personnel on an itinerant, helping teacher, resource, partially self-contained, and self-contained basis to students with handicaps in order to meet the special needs of those students, in accordance with 34 CFR 300.551.

Criteria

- The IEP must be completed before the ARD committee considers the student's placement. Annual goals, short-term objectives, and related services must be identified before placement is addressed.
- Placement is determined at least once a year.
- Placement is the instructional setting or program, not a particular teacher or classroom.
- Least restrictive environment is determined by individual needs of the student and never by handicapping condition. Categorical programming is not appropriate. For example, a student with emotional disturbance (ED) should not automatically be placed in a separate classroom with other ED students if a behavior management plan will allow the student to function in a classroom with nonhandicapped students.

  In addition, all ED students should not automatically be placed in a particular educational program any more than they should automatically be placed in a particular classroom.

- In the district as a whole, there must be available a continuum of instructional options. These options must be available to students based on their individual needs, regardless of the type of handicapping condition.

2. ***Are special education services provided in such a way as to promote the education of students with handicaps with those who are nonhandicapped to the maximum extent appropriate?***

See Question 2 *Suggestions*

Requirements

34 CFR §300.550 General.

(b) Each public agency shall insure:

(1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped;

19 TAC §75.2 General Responsibility of School Districts.

(a) Each school district shall be responsible for providing a well-balanced curriculum and for delivering effective instruction to all students enrolled. School districts shall implement the provisions of this chapter in a manner which will enable all students to participate actively in a well-balanced curriculum and master, to the best of their abilities, the knowledge, skills, and competencies established through the essential elements. For students with identified needs, at all levels of ability, school districts shall provide modifications in methodologies, pacing, and materials to ensure that instruction in the essential elements is delivered at an appropriate level.

19 TAC §75.4 Special Populations and Programs.

(b) School district programs for students identified as having special needs shall modify the method of instruction, pacing, or materials, as appropriate, to provide full opportunity for learning the essential elements. Students with identified needs shall receive instruction in accordance with this chapter and pursuant to applicable federal and state law and rules of the State Board of Education including:

4. special education—Chapter 89, Subchapter G of this title (relating to Special Education);

19 TAC §89.218 Participation of Students with Handicaps in Regular Education Programs.

(a) In providing programs, services, and activities for students with handicaps, a school district shall first use those resources made available to all students.

(b) When appropriate, special education students shall:

(1) remain in the regular education program with special education support services, supplementary aids, or other special arrangements, if needed;

(2) be educated to the maximum extent appropriate with students who are not handicapped;

Criteria

- Under *State Board of Education Rules for Curriculum (Chapter 75)*, the regular classroom teacher is expected to modify methods, materials, and pacing so that students with handicaps can benefit from instruction in the well-balanced curriculum within the regular classroom.

- The ARD committee must consider whether the goals of the student's IEP can be met in the regular classroom with supplementary aids and services.

- Unless there are unusual circumstances, the ARD committee should presume that each student can be educated in the regular classroom. The ARD committee must consider supplementary aids and services that would allow the student to achieve educational goals in a regular classroom.

- Token efforts will not suffice when determining whether a student's goals can be achieved in the regular classroom. The district is obligated to provide reasonable support necessary for the student to attain the goals.

- When considering whether the goals of the student's IEP can be achieved in the regular classroom, the ARD committee should look at the student's overall educational development, including his/her ability to learn the essential elements of the regular curriculum.

- To ensure that the student achieves all IEP goals, the ARD committee must balance the benefits of regular and special education for that student. The ARD committee may take into consideration that when a student with a disability is significantly impaired, the needs of the student with disabilities cannot be met in the regular education environment. Therefore, regular placement would not be appropriate to his/her needs.

3. ***What services that cannot be provided in a regular classroom, on a regular campus, or in a less restrictive setting need to be provided to the student with handicaps in a more restrictive setting because of the nature and severity of the handicapping condition?***

See Question 3 *Suggestions*

Requirements

34 CFR §300.550 General.

(b) Each public agency shall insure:

(1) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

34 CFR §300.551 Continuum of Alternative Placements.

(b) The continuum required under paragraph (a) of this section must:

(1) Include the alternative placements listed in the definition of special education under Reg. 300.14 of Subpart A (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions);

19 TAC §89.218 Participation of Students with Handicaps in Regular Education Programs.

(b) When appropriate, special education students shall:

(3) be placed in a program as close as possible to the student's home;

(4) be provided opportunities to participate in school activities on the same basis as nonhandicapped students; and

(5) be offered an opportunity for interaction with nonhandicapped students on a regular basis.

Criteria

When determining a student's placement, the ARD committee must justify its actions each time that student is removed from the regular educational environment and placed in a self-contained instructional arrangement or on a separate campus. The following section provides guidelines for such removals. The guidelines assume that alternative methods of providing special education and related services to keep the student in a less restrictive environment were properly considered. If alternative methods, including behavior management plans, can be implemented effectively and therefore enable a student to be placed in a less restrictive environment, the ARD committee is obligated to use those methods.

When a student is removed from regular education, the ARD committee must document in the student's folder the modifications that were made or considered to keep the student in regular education. This documentation must explain why the modifications, including supplementary aids and services, were accepted or rejected.

Removal From the Regular Classroom

Removing a student from the regular classroom may be justified under the following circumstances.

- The modifications required for the student to achieve the goals and objectives in his/her IEP cannot be implemented in the regular classroom without eliminating essential components of the regular curriculum/activity.
- Being in the regular classroom prohibits the student from achieving the goals and objectives contained in the IEP even though supplementary aids and services are used.
- Implementing the student's behavior management plan means that other students would not benefit satisfactorily from academic instruction or nonacademic activities.

Removal From the Regular Campus

Removing a student from a regular campus may be justified under the following circumstances.

- Certain services or therapies in the student's IEP cannot be provided on the regular campus. Districts should exercise caution, however. If the student could receive similar benefit from another type of service or therapy that can be provided on a regular campus, then the alternative service or therapy should be made available.
- The behavior management plan contained in the student's IEP cannot be implemented on a regular campus.
- The student's behavior is so dangerous that it cannot be controlled without intense supervision and a closed environment.
- The student had a previously unsuccessful placement on a regular campus. The ARD committee must document why or how that placement did not succeed. If the social/emotional aspects of the previous placement were detrimental to academic achievement, documentation from a counselor's, diagnostician's, or associate school psychologist's assessment should be included. However, in these circumstances, the student's IEP should address those behaviors and work toward returning the student to the regular education setting.

Circumstances Not Considered Removal From the Regular Campus

Including a student with handicaps in off-campus programs or activities with nonhandicapped individuals such as job training programs, recreational programs, or additional skill training in the community is not considered removal and does not have to be justified.

4. ***Are provisions made for the student with handicaps to participate in nonacademic and extracurricular activities with nonhandicapped students?*** See Question 4 *Suggestions*

Requirements

34 CFR §300.306 Nonacademic Services.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

34 CFR §300.553 Nonacademic Settings.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Reg. 300.306 of Subpart C, each public agency shall ensure that each handicapped child participates with nonhandicapped children in those services and activities to the maximum extent appropriate to the needs of that child.

19 TAC §89.218 Participation of Students with Handicaps in Regular Education Programs.

(b) When appropriate, special education students shall:

(4) be provided opportunities to participate in school activities on the same basis as nonhandicapped students; and

(5) be offered an opportunity for interaction with nonhandicapped students on a regular basis.

Criteria

- Students with handicaps must be given opportunities to participate with students who have no handicaps in nonacademic activities such as lunch, recess period, counseling services, transportation, health services, and recreational activities.
- Students with handicaps must have the opportunity to participate with students who have no handicaps in extracurricular activities such as athletics, clubs, and other activities sponsored by the school.
- State Board rule requires that opportunity for interaction with nonhandicapped peers be offered on a regular basis. Factors that should be considered in determining the frequency of interaction include:
  - the student's individual social/emotional needs;
  - the student's ability to model or imitate the behaviors of others;
  - the amount of staff support needed for interaction to occur;
  - the possibility of physical or emotional damage to students either with or without handicaps as a result of the interaction; and

- the degree of administrative burden in setting up the situation. For example, for students placed on a separate campus, arrangements must be made for transportation and activities must be scheduled. This could limit the number of times for interaction to be offered within a given month.

5. ***In making the placement decision, has consideration been given to any potential harmful effect on the student or on the quality of services which he/she needs?***

See Question 5 *Suggestions*

Requirements

34 CFR §300.552 Placements.

Each public agency shall insure that:

(d) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he or she needs.

Comment

The analysis of the regulations for Section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104—Appendix, Paragraph 24) includes several points regarding educational placements of handicapped children which are pertinent to this section:

> With respect to determining proper placements, the analysis states: "... it should be stressed that, where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her need..."

Criteria

- Harmful effects should be considered in terms of damage to the education of any student in the placement. In other words, in order for a placement to be appropriate, all students should benefit from the placement.

- In determining the least restrictive environment, if potential harmful effects were a factor in the decision, the ARD committee report should document the behaviors that could cause the harmful effects to students either with or without handicaps and what those effects might be. Some examples of harmful effects could include but are not limited to:
  - the student's behavior is dangerous to himself or others;
  - the student's behavior is disruptive in the classroom;
  - the student needs special services that would continually interrupt instruction in the classroom;
  - the student's emotional development is such that he/she cannot tolerate teasing or embarrassment from other students; or

- the student requires a great amount of attention from the regular education staff. The amount of attention required cannot be so extensive as to impair the quality of the program for other children. (The Fifth Circuit has ruled that regular education teachers are not required to devote a majority of their time to one student with handicaps.) However, consideration should be given to whether the student can be served in a regular classroom in which an aide assists the student and/or teacher as appropriate to the student's needs.

- If harmful effects were not a factor in the ARD committee decision, the report would document that these were considered but that none existed.

6. ***Will the student's placement be in the school which he/she would attend if not handicapped?***

See Question 6 *Suggestions*

Requirements

34 CFR §300.552 Placements.

Each public agency shall insure that:

(a) Each handicapped child's educational placement:

(3) Is as close as possible to the child's home.

(c) Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped.

19 TAC §89.218 Participation of Students with Handicaps in Regular Education Programs.

(a) In providing programs, services, and activities for students with handicaps, a school district shall first use those resources made available to all students.

(b) When appropriate, special education students shall:

(3) be placed in a program as close as possible to the student's home.

Criteria

- The IEP must be completed before the ARD committee considers the student's placement. Annual goals, short-term objectives, and related services must be identified before placement is addressed.

- If the IEP requirements cannot be met on the campus the student would attend if he or she were not handicapped, the ARD committee should then consider the campus as close as possible to the student's home where the IEP can be implemented.

- This placement decision must be justified and documented in the student's IEP.
  - Justification of placements outside the student's home school must identify the services needed by the student which cannot be provided at that school.

- In centralizing services, the district should consider the following issues in relationship to the individual needs of its students with handicaps:
  - the services available;
  - instructional arrangements;
  - number of students needing each specialized service;
  - scarcity of staff resources and efficient use of personnel;
  - costs of duplicating any equipment needed;
  - distance each student would need to travel; and
  - availability of age-appropriate peers.

- Services to be centralized should be those which require expensive equipment or resources which would be fiscally unreasonable to duplicate or noninstructional services which special education instructional personnel cannot be trained to perform. For example, moving a student to a campus which has a school nurse because he or she needs routine diaper changes would not be acceptable justification because changing diapers is not a service that must be provided only by a school nurse. Other staff at the student's home school are qualified to provide that service.

- For a student whose IEP requires that services be provided on a separate campus, the ARD committee must document the following:
  - the rationale for placement on the separate campus; and
  - considerations for participation in nonacademic and extracurricular activities to the maximum extent appropriate.

References

Daniel R.R. v. *SBOE and El Paso ISD*, 874 F. 2d 1036 (5th Cir. 1989)
Shannon v. *San Marcos ISD*, No. 005-SE-984 (April 1985)
Robert v. *Fort Worth ISD*, No. 131-SE-287 (July 1987)
OCR finding: Amarillo ISD, Ref. 06871100 (July 1987)

COMPLIANCE STATEMENT

TITLE VI, CIVIL RIGHTS ACT OF 1964; THE MODIFIED COURT ORDER, CIVIL ACTION 5281, FEDERAL DISTRICT COURT, EASTERN DISTRICT OF TEXAS, TYLER DIVISION

Reviews of local education agencies pertaining to compliance with Title VI Civil Rights Act of 1964 and with specific requirements of the Modified Court Order, Civil Action No. 5281, Federal District Court, Eastern District of Texas, Tyler Division are conducted periodically by staff representatives of the Texas Education Agency. These reviews cover at least the following policies and practices:

(1) acceptance policies on student transfers from other school districts;

(2) operation of school bus routes or runs on a non-segregated basis;

(3) nondiscrimination in extracurricular activities and the use of school facilities;

(4) nondiscriminatory practices in the hiring, assigning, promoting, paying, demoting, reassigning, or dismissing of faculty and staff members who work with children;

(5) enrollment and assignment of students without discrimination on the basis of race, color, or national origin;

(6) nondiscriminatory practices relating to the use of a student's first language; and

(7) evidence of published procedures for hearing complaints and grievances.

In addition to conducting reviews, the Texas Education Agency staff representatives check complaints of discrimination made by a citizen or citizens residing in a school district where it is alleged discriminatory practices have occurred or are occurring.

Where a violation of Title VI of the Civil Rights Act is found, the findings are reported to the Office for Civil Rights, U.S. Department of Education.

If there is a direct violation of the Court Order in Civil Action No. 5281 that cannot be cleared through negotiation, the sanctions required by the Court Order are applied.

TITLE VII, CIVIL RIGHTS ACT OF 1964; EXECUTIVE ORDERS 11246 AND 11375; TITLE IX, 1973 EDUCATION AMENDMENTS; REHABILITATION ACT OF 1973 AS AMENDED; 1974 AMENDMENTS TO THE WAGE-HOUR LAW EXPANDING THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967; AND VIETNAM ERA VETERANS READJUSTMENT ASSISTANCE ACT OF 1972 AS AMENDED IN 1974.

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